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City of Bremerton  
City Attorney's Office

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WILLIAM J. SESKO and NATACHA SESKO, )  
husband and wife, )

Plaintiffs, )

v. )

CITY OF BREMERTON, a municipal )  
corporation; BUCKLEY RECYCLE CENTER, )  
INC. aka BRC, INC., a Washington Corporation; )  
and PARAMETRIX, INC., a Washington )  
Corporation, )

Defendant. )

No. 04-5081 RBL

COMPLAINT FOR DAMAGES

Plaintiffs William J. and Natacha Sesko complain against defendant, the City of  
Bremerton, and for their Complaint allege as follows:

**JURISDICTION AND VENUE**

1. This action arises under the Constitution and laws of the United States,  
including the Civil Rights Act, 42 U.S.C. §§ 1983, et seq, and under the Constitution and  
laws of the State of Washington, including Article I, § 16 of the Washington Constitution.  
The Court has jurisdiction over the federal claims pursuant to 28 U.S.C. § 1331 and 47  
U.S.C. § 401 and over the state law claims pursuant to 28 U.S.C. § 1337.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the  
claims stated herein arose in this judicial district and defendant resides and transacts  
business within this district.

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## PARTIES

3. Plaintiffs William J. and Natacha Sesko are owners of the real property located at 3536 Arsenal Way in the City of Bremerton, and the personal property thereon, subject to abatement for nuisance by the City of Bremerton for which Plaintiffs seek damages.

4. Defendant City of Bremerton ("City") is a municipal corporation existing and operating through and subject to the laws and constitution of the State of Washington.

5. Defendant Buckley Recycle Center, Inc. aka BRC, Inc., ("BRC") is a Washington corporation which entered into a contract with the Defendant City of Bremerton to assist the City with abatement of the public nuisances at the Arsenal Way and Pennsylvania Avenue properties.

6. Defendant Parametrix, Inc. ("Parametrix") is a Washington corporation which entered into a Professional Services Agreement with the City of Bremerton to assist the City with abatement of the public nuisances at the Arsenal Way and Pennsylvania Avenue properties.

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## BACKGROUND FACTS

7. The Seskos are the owners of a 5-acre property at 3536 Arsenal Way in the City of Bremerton and an approximately one-half acre property at 1701 Pennsylvania Avenue in the City of Bremerton.

8. The Arsenal Way property was annexed into the City in June, 1991. When annexed, lawful uses on the property included a park-and-ride lot, with 300 parking spaces, and a dance hall. Since annexation, the property has been zoned "Industrial Park", a zoning designation which allows a wide variety of industrial and manufacturing uses. Although there is no longer a park-and-ride lot in operation, there are still 300 parking spaces on the property and an operational dance hall for which the Seskos have continued to maintain a business license.

yes

no

see letter memo from  
Ron Hough, July 1993

1           9.     Mr. Sesko is an engineer and inventor, with several patents on products he  
2 has developed. Through the years, the Seskos have accumulated various items on their  
3 properties -- *e.g.* logging and other equipment, sheet metal and metal forms -- which have  
4 been used by Mr. Sesko for his research and development business. Mr. Sesko has a  
5 business license for these activities.

6           10.    In 1995, the City ordered the Seskos to cease and desist using their  
7 properties as a junkyard. The Seskos appealed the order to the City's Planning  
8 Commission, which upheld the Order. The Seskos then appealed the Planning  
9 Commission's ruling to the City Council. On February 11, 1997, the City Planning  
10 Director informed the Seskos that he may have mistakenly informed them that they had an  
11 appeal to the City Council, which he was "rejecting with this letter." He further informed  
12 the Seskos that, as a result, they had no further right of administrative appeal of the Cease  
13 and Desist Orders and posted orders to vacate the properties. By the time the Seskos'  
14 received the City's change of position on their administrative appeal, the time to appeal the  
15 Cease and Desist Order to superior court had lapsed.

16           11.    When the Seskos did not comply with the Orders, the City filed separate  
17 suits in Kitsap County Superior Court for each of the properties alleging a nuisance on the  
18 properties and seeking an order of abatement and permanent injunction.

19           12.    In the Arsenal Way action, the trial court, Judge Karlyn Haberly, based  
20 upon the "failure" of the Seskos to appeal the order, initially applied the doctrine of  
21 collateral estoppel in finding the property to be a nuisance under RCW 7.48.120. The  
22 court then entered summary judgment in favor of the City on that issue and proceeded to  
23 trial to determine the extent of the nuisance and the proper remedy. Following trial, on  
24 January 30, 1998, the court entered findings and conclusions and judgment granting  
25 injunctive relief, which included an order that all vehicles and objects be removed from the  
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1 property by April 20, 1998 except those “associated with the residential use of the  
2 property.”

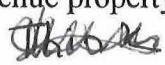
3 13. In the Pennsylvania Avenue action, In May, 1998, the trial court, Judge Jay  
4 Roof, found that the property was a nuisance per se because the Seskos were illegally  
5 operating a junkyard without a business license and without authorization under the City’s  
6 Land Use Code. The court also found that conditions on the property constituted an actual  
7 nuisance. As a result, on May 8, 1998, the court issued a mandatory injunction requiring  
8 the Seskos to clean up their property by removing all objects from the property.

9 14. The Seskos appealed the January 30 and May 8, 1998 judgments to the  
10 Court of Appeals, which upheld the trial court’s decision. *See City of Bremerton v. Sesko*,  
11 100 Wn. App 158, 995 P.2d 1257 (2000). In particular, the Court of Appeals held that the  
12 trial court did not abuse its discretion in ordering unconditional abatement of the use that  
13 the Seskos were making of their properties. According to the Court, the remedy was  
14 reasonable: “The orders for injunctive relief do not prevent uses for business purposes;  
15 they only require the removal of the junk on the sites.” *City of Bremerton v. Sesko*, 100  
16 Wn. App at 164.

17 15. Following entry of the January 30, 1998 Order, the Seskos began removing  
18 the objectionable vehicles from the front parking lot on the Arsenal Way property. Since  
19 January 1, 2001, they have rented a storage yard in Bremerton for \$1000 per month for the  
20 purpose of storing items removed from the Arsenal Way property. Junk vehicles have  
21 been taken to a wrecking yard in Mason County. The Seskos also rented a store in Gorst  
22 between April and September, 2001 to sell items, but because of the slow economy and  
23 slow sales, they abandoned that effort in favor of rental of additional storage at \$500 per  
24 month.

25 16. Following the decision in *City of Bremerton v. Sesko*, the City sought and  
26 obtained from Judge Haberly on December 15, 2000 an Order Clarifying Judgment.  
27

1 Finding that the dates for compliance with the January 30, 1998 Judgment on the Arsenal  
2 Way property had passed during the pendency of the Seskos' unsuccessful appeal, the  
3 court "clarified" the Judgment to authorize the City and its contractors "to prepare for  
4 contract bidding [and] to remove all objects and vehicles on the property." According to  
5 the Order, this authority "will continue until the nuisance has been abated." The Order did  
6 not further specify what vehicles and objects would not have to be removed from the  
7 Arsenal Way property pursuant to the January 30, 1998 Judgment because "associated with  
8 the residential use of the property."

9 17. In early January, 2001 the City commenced abatement of the nuisance on  
10 the Pennsylvania Avenue property as per the Court's injunction. The Seskos assisted in  
11 the abatement by removing items of personal property from the property, some of which  
12 were stored with other personal property of theirs in a leased space on any adjoining  
13 storage yard owned by Paul McConkey. As a result, by February 1, 2003, all items and  
14 objects of personal property were removed from the Pennsylvania Avenue property and  
15 abatement of the nuisance under the 1998 injunction was completed. 

16 18. The City took no further action on the Arsenal Way property until  
17 September 21, 2001, when it sent a letter to the Seskos advising them that it intended to  
18 begin the bidding process for selecting a contractor for the abatement action on the  
19 property and requested that the Seskos "tag, in a prominent fashion, the objects and  
20 vehicles associated with the residential use of your property no later than September 28,  
21 2001 or remove such objects and vehicles from your property." On October 1, 2001, a  
22 City official came out to view the Seskos' property with contractors who were bidding on  
23 the abatement action.

24 19. At that time, the Seskos informed the City that they had not yet tagged  
25 objects and vehicles because they were unsure how to interpret the court's order regarding  
26 items associated with residential use of the Arsenal Way property, especially in light of the  
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1 existing nonresidential zoning and business uses on the property, including Mr. Sesko's  
2 business, the dance hall, and the existing 300-car parking lot. Nonetheless, the Seskos  
3 were already in the process of moving items and cleaning up the property, as well as  
4 removing items from the property when the City on October 17, 2001 filed a motion with  
5 the trial court for clarification of the prior judgment and orders.

6 20. At the November 2, 2001 hearing on the City's motion, the City requested  
7 an order that specified that the only items associated with residential uses which can be  
8 retained on the property on the Arsenal Way property are "those types of goods which are  
9 conventionally associated with residential property use, such as...lawn furniture, flower  
10 pots, barbecues, and garden tools...." In addition, the City also requested for the first time  
11 that the number of vehicles allowed on the property be limited to six, which the City  
12 alleged to be the number that could fit in the driveway. According to the City, the  
13 driveway is the only designated off-street parking area on the property in which the Code  
14 allows vehicles to be parked.

15 21. In response, the attorney for the Seskos briefed the court on the progress  
16 that the Seskos were making in complying with the court's orders regarding the Arsenal  
17 Way property and requested clarification on which items could remain on the property,  
18 especially in light of the size of the property, its nonresidential zoning and uses, including  
19 the dance hall and Mr. Sesko's business, and the significant amount of existing, off-street  
20 parking on the property. He also disputed the City's interpretation of its Code regarding  
21 the designated parking areas on the property on which vehicles can lawfully be parked.

22 22. To help resolve the issue of which items could remain, the Seskos' attorney  
23 proposed a 30-foot perimeter around the buildings within which personal items would be  
24 stored; otherwise they would be tagged. When the City proposed a 10-foot perimeter, the  
25 trial court compromised on a 15-foot perimeter, and requested that the parties come back in  
26 two weeks, on November 16, 2001, to report on their progress. The court then signed an  
27

1 Order Clarifying Judgment that authorized the City and its contractors "to remove any  
2 objects which have not been tagged [by November 13, 2001] as being utilized in  
3 conjunction with residential property use and any residential objects which are not stored  
4 within 15 feet of the house." Without explanation or findings, the trial court also ordered  
5 that the number of vehicles which can remain on the Arsenal Way property be limited to  
6 six vehicles.

7 23. Consistent with the court's November 2, 2001 Order, the Seskos stored  
8 items within the 15-foot perimeter of the buildings on the Arsenal Way property and  
9 tagged 155 items prior to November 13, 2001.

10 24. On November 15, 2001, the City filed a motion to limit the items subject to  
11 the abatement order "to goods which are typically and conventionally used in conjunction  
12 with a residence," which according to the City, would consist of two boats, one dumpster  
13 and one lawnmower. A City official based its obviously subjective determination of what  
14 items are associated with residential use of the property on the definition of "residential" in  
15 Websters Dictionary. The City insisted the articles and materials stored on the Arsenal  
16 Way property for business purposes were "junk" subject to abatement.

17 25. The Seskos, appearing pro se, filed a cross-motion requesting that the court  
18 find that the list of 155 items tagged by them were not subject to the abatement action but  
19 "are in fact residential and necessary to the on-going commitments of the Defendants."  
20 The Seskos also objected to the contract that was let for the abatement work, specifically,  
21 that it essentially allowed the contractor to assign salvage value to the items in its bid  
22 without any accounting as to its actual value, a violation of the court's January 30, 1998  
23 Judgment, which required that the salvage value be credited against the cost of clean up.  
24 The Seskos also requested that the court appoint a special master to oversee the abatement  
25 action to protect their property rights, and to reconsider its ruling regarding the six-vehicle  
26

27 salvage value  
included in bid price

See list



1 limit in light of evidence of differential treatment by the City of surrounding property  
2 owners.

3 26. At the November 16, 2001 hearing, the court acknowledged that the Seskos  
4 had done a lot of work in the prior two weeks but nonetheless ignored their list of tagged  
5 items and other issues raised by them in favor of the City's "short list" of four items and  
6 went on to hold that six vehicles, two boats, one dumpster, one travel trailer and one set of  
7 stairs could remain on the Arsenal Way property, the latter only if used for the two boats.  
8 The court also disregarded the Seskos' testimony about the residential use of such items as  
9 a shredder on a property of that size and the Planning Director's earlier agreement, falsely  
10 denied by the City at the hearing, that two pieces of heavy equipment could remain. *gone w/  
nuisance  
action*

11 27. The court then entered an order requiring the Seskos to "tag residential  
12 goods within the fifteen foot perimeter area across the Arsenal Way property by  
13 November 27, 2001" and scheduled a further hearing for November 30, 2001.

14 28. During that two week period set by the court, the City did not work with the  
15 Seskos to resolve issues; instead, a City official, Janet Lunceford, went out to the site, took  
16 photographs, and left. The City then filed with the court a declaration from Ms. Lunceford  
17 dated November 29, 2001, which requested entry of an order specifying that items within  
18 the 15-foot perimeter of buildings be limited to one pair of skis, one broom, one hose, one  
19 shovel, two wheelbarrows, two barbecues, a trash can, a lawnmower and cookware, in  
20 addition to the few items allowed by the court at the November 16, 2001 hearing.

21 29. The Seskos did not receive a copy of the declaration until the day of the  
22 November 30, 2001 hearing. When the trial court asked Mr. Sesko if he was prepared to  
23 respond to it, he testified that he was not, the documents were quite extensive, and because  
24 the City did not meet with him to resolve outstanding issues, he had no idea about what  
25 was going to happen at the hearing. *check  
Janet's  
for  
record*



1           30.     The court nevertheless proceeded with the hearing and summarily ruled that  
2 the Seskos must "remove the items in the shed area, remove the items that are stored under  
3 the eaves of the dance hall, mark six vehicles as your residential vehicles, and you can  
4 keep two bathtubs."

5           31.     The Seskos were confused at the hearing about the court's prior orders and  
6 sought clarification on issues that they testified needed to be resolved, some of which even  
7 the City and trial court acknowledged were new. Although the court acknowledged that  
8 the Seskos "have come a long way," that the abatement was a very complicated issue and  
9 that some of the issues raised by the Seskos "may be in a gray area that I haven't really  
10 ruled on specifically," the court refused to provide the clarification the Seskos sought or to  
11 resolve the new issues.

12           32.     Nonetheless the court went on to sign an order on November 30, 2001 that  
13 allowed the Seskos to retain the following goods on the Arsenal Way property within the  
14 15-foot buffer as measured from the north edge of the residence and excluding an  
15 appurtenant shed:

16                   One metal tent frame, one pair of skies, one broom, one  
17                   hose, one shovel, one rake, two wheelbarrows, two  
18                   barbecues, two extension ladders, large metal fan, yellow  
19                   step stool, one garbage can and one trash can, two boats,  
20                   metal stairs, if necessary to be used in conjunction with the  
21                   two boats kept on the property, fire wood stored in three  
22                   Quonset huts, one travel trailer or camper, two clothes lines,  
23                   a dumpster and four lawnmowers, pile of firewood logs, two  
24                   canoes, one garden-cart, one concrete mixing pan, one  
25                   outdoor vacuum, two mailboxes.

26           The order also allowed the Seskos to keep six vehicles on the Arsenal Way property. All  
27 other goods and vehicles had to be removed by either the Seskos or the City's contractor,  
including supplies, materials, and equipment necessary for business uses.

          33.     The Seskos were surprised by the specificity and narrowness of the  
November 30, 2001 Order, given the acknowledgement by the court and all parties at the  
hearing that there were a number of issues that still needed to be resolved. They were also

1 confused about the Order, and sought clarification after it was signed, to which the trial  
2 court concluded by stating: "[a]t this point there's no hearing scheduled, and the hope is  
3 that you can resolve it without the court."

4 34. The abatement of the Arsenal Way property was scheduled to commence on  
5 December 17, 2001.

6 35. On November 20, 2001, the City entered into a Professional Services  
7 Agreement with Parametrix, Inc. to assist the City with abatement of the public nuisances  
8 at the Arsenal Way and Pennsylvania Avenue properties. The Agreement required  
9 Parametrix, Inc. to monitor contractor performance against contract specifications and to  
10 report to the City on the completion of the nuisance abatement. On December 12, 2001,  
11 the City entered into a contract with Buckley Recycle Center, Inc. (BRI, Inc.) to do all  
12 work on the abatement project in accordance with Construction Specifications for Sesko  
13 Property Nuisance Abatement Project.

14 36. On December 13, the Seskos filed a motion to stay the abatement for 30  
15 days to allow time for the parties to reach agreement on the items covered by the  
16 abatement order. On December 21, 2001, the trial court denied the motion, finding that  
17 there was no relief left in the court system and that there was no jurisdiction for the court  
18 to issue a stay.

19 37. The Seskos timely appealed the three post-judgment orders of November 2,  
20 2001, November 16, 2001, and November 30, 2001. In an unpublished decision filed on  
21 April 3, 2003, the Washington State Court of Appeals, Division II, dismissed the Seskos'  
22 appeal on procedural grounds, holding that the judgments are not appealable and collateral  
23 estoppel bars further review. On July 20, 2003, the Seskos filed a Petition for Review in  
24 the Washington State Supreme Court, which was denied on February 4, 2004.

25 38. Meanwhile, the City commenced an abatement action on the Arsenal Way  
26 property on December 17, 2001. They did this while the Pennsylvania Avenue abatement  
27

3  
1 was proceeding. The contractors never did finish abating the nuisance on the Arsenal Way  
2 property. On January 23, 2002, the contractors hauled two truckloads of metals and metal  
3 pipes from the Pennsylvania property and dumped them inside the Arsenal Way property.  
4 They brought two more truckloads on January 31, 2002. The City and contractors did so  
5 without determining whether any of these items were "junk" or constituted a nuisance.  
6 They then removed these and other items from the Arsenal Way property without any  
7 accounting as to their number or value.

8 39. The abatement of the nuisance on the Pennsylvania Avenue property was  
9 completed by February 1, 2002, when all items and objects of personal property had been  
10 removed. The City was still not satisfied, however, and approximately one week later  
11 ordered Mr. McConkey to remove the personal property stored by the Seskos at his storage  
12 yard and issued a cease and desist order against Mr. McConkey to this effect. The order  
13 only applied to the personal property stored by the Seskos at the storage yard, not to  
14 personal property stored there by others. *Date conflicts w/ para 17*  
*untrue, see Cease + desist*

15 40. As a result, Mr. McConkey terminated the lease with the Seskos for storage  
16 of their personal property and evicted them from their leased space, thereby forcing the  
17 Seskos to remove and relocate their personal property elsewhere. They did so in August,  
18 2002. Of the items removed, only three pieces of equipment were returned to their *see photos + inventory*  
19 Pennsylvania Avenue property, equipment that the Seskos intended to use for their own  
20 business purposes, specifically for research and development purposes in conjunction with  
21 marine activities. The remainder of the items of personal property were moved elsewhere.

22 41. The City was still not satisfied, however, and in October, 2002 sought an  
23 order from the trial court "clarifying" the May 8, 1998 judgment and requiring removal of  
24 all items of personal property from the Pennsylvania Avenue Property. While  
25 characterizing the request as one for enforcement of the 1998 injunction, the City in fact  
26 sought a new abatement order requiring removal of all items of personal property on the  
27



1 Property placed there since abatement of the nuisance under the 1998 order. In other  
2 words, the City alleged that the placement or storage of *any* personal property by the  
3 Seskos on their Property violated the 1998 injunction. *yes, judgment says "no storage"*

4 42. The trial court apparently agreed, and following three hearings on the  
5 matter, issued an order on March 28, 2003 authorizing removal of all items of personal  
6 property on the Property. In so doing, the trial court did not hold that the Seskos were  
7 operating an illegal junkyard or storage facility on the Pennsylvania Avenue property, as it  
8 did in the prior order. Nor did the court hold that the conditions on the Pennsylvania  
9 Avenue property constituted an actual nuisance, as it also did in the prior order. In fact,  
10 nowhere did the court make any findings that the use of the Pennsylvania Avenue property  
11 constituted a nuisance, as it did in the prior order. Instead, the trial court for the first time  
12 held that storage of any personal property on the property by the Seskos violated paragraph  
13 3 of the 1998 judgment, which specified that "the Seskos shall not use this property as a  
14 storage facility and cannot store objects of any kind on the property," regardless of whether  
15 the Seskos were in fact operating an illegal junkyard or storage facility or otherwise storing  
16 junk on the Property. The court also held that the Seskos had not applied for a permit or  
17 other permission from the City that would authorize such use of the property, even though  
18 the evidence provided by the City did not support the court's holding that a permit or other  
19 authorization was required by the City for the Seskos' placement of personal property on  
20 their industrially-zoned land for their own use.

21 43. The Seskos timely appealed the March 28, 2003 Order on the Pennsylvania  
22 Avenue property to the Washington State Court of Appeals, Division II. That appeal is  
23 still pending.

24 44. The actions of Defendants has resulted in removal of essentially all  
25 residential goods and vehicles and all supplies and materials for business on the Arsenal  
26 Way and Pennsylvania Avenue properties, leaving the Seskos without any means of  
27

1 livelihood, with a vacant, five-acre parcel and a vacant half-acre parcel, chewed up and  
2 disturbed from the heavy equipment used to remove the goods and materials, and with  
3 several hundred thousand dollars in liens for the cost of removal of property for which the  
4 Seskos have never received a proper accounting. *not filed*

5 45. To date, the City has never identified which items owned by the Seskos are  
6 junk. Instead, the City authorized the removal or destruction of nearly everything owned  
7 by the Seskos, including all usable building materials, cars, trucks, boats, heavy  
8 machinery, and even exhibit panels for the Chinese Culture and Arts Festival, leaving only  
9 a few household items for a family of five on the Arsenal Way property, included one hoe,  
10 one broom, one wheelbarrow, one pair of skis, one dumpster, and a few other household  
11 items. Everything else was removed or destroyed. The City's contractor even crushed the  
12 Seskos' barbecue, and hauled away all the Seskos's vegetable plants and wood used for as  
13 their winter heating source.

14 46. The abatement on the Arsenal Way property was never completed, and the  
15 property never cleaned up. All of the paint stored in the shed was left outside by the dance  
16 hall for two years and ruined. The City contractors also stored hazardous materials in  
17 Arsenal Way yard between December 17, 2001 and November 26 2003. And when cars  
18 were crushed on the Arsenal Way property, anti-freeze, oil, grease and gasoline were  
19 spilled on the ground. *not see report from Health District Jan 2002*  
20 nuts and washers from the car tires were mix into the mud and spread all over the yard.

21 47. Further, the machinery used by the City's contractor destroyed the Arsenal  
22 Way property's drainage and parking lot, leaving deep cuts in and disturbing what was  
23 once a smoothly graveled and level surfaced parking lot on the property. *I have photos*

24 48. The Seskos have yet to receive an accounting of the goods removed or  
25 destroyed or their value.  
26  
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1 **FIRST CLAIM FOR RELIEF**  
2 **(Violation of the Civil Rights Act)**

3 49. The Seskos incorporate herein by reference the allegations set forth in  
4 paragraphs 7 through 48 above.

5 50. Title 42 U.S.C. § 1983 provides in relevant part that:

6 Every person who, under color of any statute, ordinance,  
7 regulation, custom, or usage, of any State or Territory or the  
8 District of Columbia, subjects, or causes to be subjected, any  
9 citizen of the United States or other person within the  
10 jurisdiction thereof to the deprivation of any rights,  
privileges, or immunities secured by the Constitution and  
laws, shall be liable to the party injured in an action at law,  
suit in equity, or other proper proceeding for redress.

11 51. The City, in conducting, managing, and supervising the removal and  
12 destruction of property on the Arsenal Way and Pennsylvania Avenue properties, acted  
13 under color of the laws and regulations of the State of Washington, and the laws,  
14 ordinances, and regulations set forth in the City plans and codes.

15 52. The City's actions violate the rights, privileges and immunities the Seskos  
16 as secured by the Equal Protection, Due Process and Just Compensation Clauses of the  
17 United States Constitution. The City therefore acted in violation of the Sesko's rights as  
18 secured by 42 U.S.C. § 1983. The Seskos are entitled to recover its attorneys' fees and  
19 costs incurred in bringing this action pursuant to 42 U.S.C. § 1988 and as may otherwise  
20 be provided by law.

21 **SECOND CLAIM FOR RELIEF**

22 **(Taking of Property under Washington and United States Constitutions)**

23 53. Plaintiffs herein incorporate paragraphs 7 through 52 by reference as if fully  
24 set forth herein.

25 54. The Defendants' actions in conducting, managing, and supervising the  
26 removal and destruction of property on the Arsenal Way and Pennsylvania Avenue  
27



1 properties has caused a taking or damaging of their property without just compensation  
2 having first been paid as required by Article I, § 16 of the Washington Constitution and the  
3 Fifth Amendment to the United States Constitution.

### 4 **THIRD CLAIM FOR RELIEF**

#### 5 **(Negligence)**

6 55. Plaintiffs herein incorporate paragraphs 7 through 54 by reference as if fully  
7 set forth herein.

8 56. As a result of Defendants' negligence in failing to properly conduct,  
9 manage, and supervise abatement of a nuisance on the Arsenal Way and Pennsylvania  
10 Avenue properties, Defendants caused plaintiffs' property to be removed, destroyed and  
11 sold without lawful justification and without an adequate accounting as to its value.

12 57. Defendants' negligence caused plaintiff personal injury and damages.

### 13 **FOURTH CLAIM FOR RELIEF**

#### 14 **(Unlawful Abatement, Ch. 7.48, RCW)**

15 58. Plaintiffs herein incorporate paragraphs 7 through 57 by reference as if fully  
16 set forth herein.

17 59. Defendants conducted, managed and supervised abatement of a nuisance on  
18 plaintiffs' Arsenal Way and Pennsylvania Avenue properties beyond their lawful authority  
19 and in violation of Chapter 7.48, RCW.

20 60. Defendants' willful and unauthorized actions caused plaintiffs damages in  
21 the form of the fair market value of the property taken or damaged, property restoration  
22 costs, and the economic loss due to the loss of use of the property in an amount to be  
23 established at the time of trial.

1 **FIFTH CLAIM FOR RELIEF**

2 **(Damage to Land and Property, RCW 4.24.630)**

3 61. Plaintiffs herein incorporate paragraphs 7 through 60 by reference as if fully  
4 set forth herein.

5 62. Defendants, in the conduct, management and supervision of the abatement  
6 of the nuisance on the Arsenal Way and Pennsylvania Avenue properties, wrongfully took  
7 or caused to be taken from plaintiffs' property items of personal property that the  
8 defendants knew, or should have known, were beyond their abatement authority to remove.  
9 Defendants further wrongfully caused waste and injury to plaintiffs' real property at  
10 Arsenal Way and Pennsylvania Avenue.

11 63. Damages therefrom include, but are not limited to, treble damages for the  
12 market value of the property taken or destroyed and costs of restoration.

13 **SIXTH CLAIM FOR RELIEF**

14 **(Conversion)**

15 64. Plaintiffs herein incorporate paragraphs 7 through 63 by reference as if fully  
16 set forth herein.

17 65. Defendants willfully converted plaintiffs' property without lawful  
18 justification, and has deprived plaintiffs of possession of their property, by conducting,  
19 managing, and supervising the removal, destruction and sale of plaintiffs' property on their  
20 Arsenal Way and Pennsylvania Avenue properties without any accounting of the property  
21 and its value having been made and outside the lawful scope of the authorized abatement.

22 66. Defendants' wrongful and willful conversion of plaintiffs' property has  
23 cause plaintiff damages in the form of the fair market value of the property and the  
24 economic loss due to the loss of use of the property in an amount to be established at the  
25 time of trial.

1 **DAMAGES**

2 67. Plaintiffs have suffered the following damages, in an amount to be proven  
3 at trial, due to defendant's wrongful conduct described above:

- 4 a. The fair market value of the property taken, damaged or destroyed;  
5 b. Restoration costs to the property;  
6 c. Loss of use of the property;  
7 d. Lost business profits; and  
8 e. Emotional distress.

9 **REQUEST FOR RELIEF**

10 Plaintiffs request that the court enter judgment against defendant as follows:

- 11 1. Awarding plaintiffs their claimed damages in amounts to be  
12 established at trial.  
13 2. Awarding plaintiffs treble the amount of plaintiffs' claimed damages  
14 established at trial under RCW 4.24.630.  
15 3. Awarding plaintiffs their costs and attorney fees under 42  
16 U.S.C. §1988.  
17 4. Awarding plaintiffs any further or additional relief which the court  
18 finds equitable, appropriate or just.

19 DATED this 17th day of February, 2004.

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